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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,940	11/14/2001	Youichirou Suzuki	KAS-156	2852
24956	7590	03/18/2004	EXAMINER	
MATTINGLY, STANGER & MALUR, P.C. 1800 DIAGONAL ROAD SUITE 370 ALEXANDRIA, VA 22314			LUDLOW, JAN M	
			ART UNIT	PAPER NUMBER
			1743	

DATE MAILED: 03/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/936,940	Applicant(s) SUZUKI ET AL.	
	Examiner Jan M. Ludlow	Art Unit 1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/20/2001</u> . | 6) <input type="checkbox"/> Other: ____. |

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1. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1-3, "a sample, a reagent, etc." (and variations thereof, each occurrence) is unclear as to the scope of the claim—are the sample, reagent and "etc." recited in the alternative, or are they mixed together, and what is encompassed by "etc."? In claim 1, last line "optional" is unclear in that frequency modulation inherently occurs over a range of frequencies and it is therefore unclear how the range can be optional.

2. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: there is no operative connection between the power supply and the wave generator in claim 1, or between the control unit, sensor and power supply in claim 3.

3. Claims 2, 4-6, have been interpreted as presenting functional limitations based on the process steps attributed to the power supply and control unit.

4. Claims 1-6 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

5. The following is a statement of reasons for the indication of allowable subject matter: The prior art fails to teach or suggest an automated analyzer with an agitation

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and an analyzing section as claimed, wherein the agitation section includes a frequency modulated ultrasonic agitator.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

7. Katou et al teaches an analyzer with agitation and analysis sections, wherein the agitation may be by frequency modulated ultrasonic waves [0051], but the reference does not constitute prior art.

8. Watari and Miyake each teach automated analyzers with ultrasonic agitation, but do not teach or suggest frequency modulation.

9. Puskas and Meitzler each teach frequency modulated ultrasonic agitation, but fail to teach or suggest use of this method in automated analyzers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jan M. Ludlow whose telephone number is (571) 272-1260. The examiner can normally be reached on Monday-Thursday, 11:30 am - 8:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on (571) 272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jan M. Ludlow
Primary Examiner
Art Unit 1743

Jml
February 29, 2004